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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,486	08/17/2001	Geert Jannes	2551-59	4000
23117	7590	10/27/2003	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			HORLICK, KENNETH R	
			ART UNIT	PAPER NUMBER
			1637	

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant()	
	09/931,486	JANNES ET AL.	
	Examiner	Art Unit	
	Kenneth R Horlick	1637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 115-150 is/are pending in the application.
- 4a) Of the above claim(s) 119, 120, 122, 123, 129-134, 137-140 and 146-148 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 116-118, 121, 124-128, 135, 136, 141-145, 149 and 150 is/are allowed.
- 6) ☒ Claim(s) 115 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 08/765,332.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

1. Newly submitted claims 119, 120, 122, 123, 129-134, 137-140, and 146-148 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims with corresponding subject matter were restricted out as Groups II and III in the restriction requirement mailed 07/23/02.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 119, 120, 122, 123, 129-134, 137-140, and 146-148 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Accordingly, claims 115-118, 121, 124-128, 135, 136, 141-145, 149, and 150 are under examination.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 115 is rejected under 35 U.S.C. 102(b) as being anticipated by Olsen (US 4,508,823).

This claim is drawn to nucleic acids comprising a sequence including that of SEQ ID NO:111, which is the 16S-23S rRNA spacer sequence from *Pseudomonas aeruginosa*. Due to the open claim language, the claims encompass any larger nucleic acid which comprises said sequence.

Olsen discloses isolated chromosomal DNA from *Pseudomonas aeruginosa*, which inherently comprises the sequence of SEQ ID NO:111 (see column 6, lines 3-59). This rejection would be obviated by amending the claims to require nucleic acids "consisting of" the recited spacer sequences.

4. Claim 115 is rejected under 35 U.S.C. 102(b) as being anticipated by Atlas et al. (US 5,298,392).

This claim is drawn to nucleic acids comprising a sequence including that of SEQ ID NO:115, which is the 16S-23S rRNA spacer sequence from *Pseudomonas putida*. Due to the open claim language, the claims encompass any larger nucleic acid which comprises said sequence.

Atlas et al. disclose isolated genomic DNA from *Pseudomonas putida*, which inherently comprises the sequence of SEQ ID NO:115 (see column 16, lines 12-16). This rejection would be obviated by amending the claims to require nucleic acids "consisting of" the recited spacer sequences.

5. With respect to the rejections above in paragraphs 3 and 4, the arguments of the response filed 08/13/03 have been fully considered, but are not found persuasive. The response points out that based on the teachings of Olsen and Atlas et al. there is no guarantee that isolated genomic nucleic acids encompassed according to the claim language are actually taught. However, it is submitted that based on the noted teachings one of ordinary skill in the art would find this reasonably likely; it is believed that given the broad language of the claim it is applicant's burden to show more than a mere possibility that they are not present, but actual likelihood that they are not present.

6. Claims 116-118, 121, 124-128, 135, 136, 141-145, 149, and 150 are allowable.

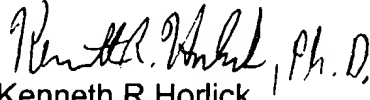
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R Horlick whose telephone number is 703-308-3905. The examiner can normally be reached on Monday-Thursday 6:30AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 703-308-1119. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


Kenneth R Horlick
Primary Examiner
Art Unit 1637

10/22/03